Supreme Court, U.S.
FILED
JAN 29 1988
JOSEPH F. SPANIOL, JR.
CLERK

No. 87-1128

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

PEABODY COAL COMPANY, - - - Petitioner,

versus

MOTILAL MAURYA, - - - - - Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

HENRY E. HAYDEN
HAYDEN & McKOWN
P.O. Box 213
Courthouse Square
Hartford, KY 42347
(502) 298-7691

Counsel of Record for Respondent

WESTERFIELD-BONTE CO., 619 W. KENTUCKY–P.O. BOX 3251, LOUISVILLE, KY.

QUESTION PRESENTED

Whether the Sixth Circuit's Decision Holding That an Untimely State Filing Does Not Bar a Timely Filed Federal Title VII. Action Is In Conflict With Other Lower Court Decisions Requiring Further Review by This Court.

TABLE OF CONTENTS

	PAGE
Question Presented	i
Table of Authorities	iii
Statement of the Case	1– 5
Summary of Argument	5– 6
Argument	6–12
Conclusion	12

TABLE OF AUTHORITIES

Cases: PAGE

Allen v. *McCurry*, 449 U. S. 90, (1980) 7

Anderson v. *Illinois Tool Works, Inc.*, 753 F. 2d 622 (7th Cir. 1985) 12

Aronsen v. *Crown Zellerbach*, 662 F. 2d 584 (9th Cir. 1981) *cert. denied*, 459 U. S. 1200 (1983)... 12

Ciccone v. *Textron, Inc.*, 651 F. 2d 1 (1st Cir.) *cert. denied*, 452 U. S. 917 (1981) 12

Howze v. *Jones & Laughlin Steel Corp.*, 750 F. 2d 1208, 1210-11 (3rd Cir., 1984) 11–12

Jones v. *Airco Carbide Chemical Company*, 691 F. 2d 1200, 1204 (6th Cir. 1982) 9

Kocian v. *Getty Refining & Marketing Co.*, 707 F. 2d 748, 750-52 (3rd Cir., 1983) 12

Kremer v. *Chemical Construction Corp.*, 456 U. S. 461 (1982) 5, 6, 7, 8, 9

Marrese v. *American Academy of Orthopedic Sur-*..... *geons*, 105 S. Ct. 1327 (1985) 8

Martinez v. *United Automobile, Aerospace and Agricultural Implement Workers of America, Local 1373*, 772 F. 2d 348 (7th Cir., 1985)..... 11

Migra v. *Warren City School District Board of Education*, 465 U. S. 75, (1984) 7

Mohasco Corp. v. *Silver*, 447 U. S. 807 (1980) 8, 9

Oscar Mayer & Co. v. *Evans*, 441 U. S. 750, 99 S. Ct. 2066, 60, Lawyers' Ed. 2d, 609 (1979) 10

Rasimas v. *Michigan Dept. of Mental Health*, 714 F. 2d 614 (6th Cir., 1983), cert. denied 466 U. S. 950 (1984) 9

Smith v. *Oral Roberts Evangelistic Ass'n, Inc.*, 731 F. 2d 684, 688-90 (10th Cir., 1984) 12

Thomas v. *Florida Power & Light Co.*, 764 F. 2d 768, 771 (11th Cir., 1985) 11

Unger v. *Consolidated Food Corp.*, 693 F. 2d 703 (7th Cir.) on remand from 456 U. S. 1002 (1982) 11

PAGE

Wakeem v. *Hoffman House, Inc.*, 724 F. 2d 1238 (7th Cir., 1984) 11

Whitfield v. *City of Knoxville*, 756 F. 2d 455 (6th Cir., 1985) 8– 9

Statutes:

42 U.S.C. §2000e-5(c) 8

No. 87-1128

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1987

PEABODY COAL COMPANY, - - - *Petitioner,*

v.

MOTILAL MAURYA, - - - - *Respondent.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

To the Honorable William H. Rehnquist, The Chief Justice, and Associate Justices of the Supreme Court of the United States.

STATEMENT OF THE CASE

Motilal Maurya was born in India. He was educated in India and West Germany and holds a Master's Degree in mining and metallurgical engineering from the Technical University, Berlin, Germany. He held several mine and mining related positions while in West Germany. He moved to the United States in 1968 and held additional positions in the mining industry.

He began work for Peabody Coal Company at their Alston #4, Underground Mine in Ohio County, Ken-

tucky, on March 3, 1975. He was promoted from management trainee to section foreman, a position he held until he was discharged in October of 1977.

In October, 1977, he was terminated by Mr. James Utley, Supervisor Employee of Peabody, although the personnel records of Peabody Coal Company indicate that Maurya's last day worked was November 9, 1977.

March 20, 1978—Maurya files a complaint with the Equal Employment Opportunity Commission (hereinafter EEOC) alleging discrimination in his dismissal from Peabody Coal Company, based on his national origin. The EEOC deferred to the State agency.

May 2, 1978—formal complaint filed by the Kentucky Commission on Human Rights (hereinafter KCHR) on behalf of Maurya.

The KCHR heard evidence concerning the charge of discrimination based on national origin. The evidence showed that the problems began for Mr. Maurya when there was a management change at Alston #4 Mine. Testimony heard by the Commission was replete with phrases like "Damn Indian. I hate Indians. I don't like you. I hate Indians. Any chance I get, I fire you and other damn Indians, too." R. 49.

Harold Burden, the mine manager, was quoted as saying that he didn't believe they ought to have women, negroes and Indians in the coal mines. R. 406. Statements were made by the mine manager like "I don't like damn indians" and "I'm going to fire every one I have". The superintendent had made statements

like "I don't like indians" and "we're going to get rid of you". R. 574.

On September 20, 1979, after hearing the evidence, the KCHR issued an order determining that Maurya was discharged by Peabody because of his national origin in violation of KRS §344.040. The Commission did not order Maurya reinstated and did not order backpay.

On October 1, 1979, Maurya filed a motion to reopen the proceedings before the KCHR requesting immediate reinstatement and back wages.

On October 15, 1979, Peabody filed the first of its two appeals in the Hopkins Circuit Court seeking judicial review of the Commission's September 20, 1979 order.

On October 17, 1979, the Commission issued an amendment to its order of September 20, 1979, in which is granted Maurya's motion to reopen and ordered that he be immediately reinstated.

On October 23, 1979, Maurya filed suit in the Ohio County Circuit Court seeking review of the Commission's order, denying him backpay.

On October 25, 1979, Peabody filed its second appeal to the Hopkins Circuit Court seeking judicial review of the Commission's September 20, 1979, order and October 17, 1979 amendment.

On January 20, 1980, the notice of right to sue letter was issued by the EEOC.

On April 16, 1980, Maurya filed his Title VII action in the U.S. District Court, Western District of Kentucky.

On May 27, 1981, (over a year after Maurya had filed his Title VII action in the District Court), the Hopkins Circuit Court issued a final judgment setting aside the order of the Commission and remanding the case to the Commission for the entry of an order of dismissal. The Court, in its opinion stated:

> "The threshold procedural question raised by Peabody is whether Maurya's complaint of discrimination, filed with the Commission on May 2, 1978, was timely. If not, then the order of the Commission must be set aside and the Court need not reach the remaining contention of the party concerning whether Peabody in fact, discriminated against Maurya . . .".
>
> ". . . in view of the findings of the Court that the complaint of Maurya was untimely filed as a matter of law, the Court does not reach the remaining contention of the party concerning the question of whether the finding of the Commission that Maurya was discharged unlawfully because of his national origin, is supported by substantial evidence and whether the remedies afforded Maurya was proper."

On March 12, 1982, the Kentucky Court of Appeals affirmed the decision of the Hopkins Circuit Court.

On September 24, 1982, the Kentucky Court of Appeals issued an order denying petition for hearing.

On December 7, 1982, the Supreme Court of Kentucky denied discretionary review.

On March 21, 1986, Judge Johnstone dismissed the Title VII action on the basis of res judicata based on the late Kentucky filing.

On July 2, 1987, the 6th Circuit reversed and remanded to the District Court. Rehearing was denied on October 1, 1987.

SUMMARY OF ARGUMENT

1. Motilal Maurya filed a timely Title VII claim with the EEOC, which deferred to the KCHR. The KCHR filed an untimely complaint, but found that Mr. Maurya had been discriminated against. The State Court decision that decided only that the State filing was untimely does not preclude Maurya from pursuing his Title VII action since the State made no finding that his claim of discrimination was meritless as in *Kremer* v. *Chemical Construction Corp.*, 456 U. S. 461 (1982).

2. The State Court action that determined only that the Kentucky filing was untimely, but specifically did "not reach the remaining contention of the parties concerning the question of whether the finding of the Commission that Maurya was discharged unlawfully because of his national origin, is supported by substantial evidence . . .", did not afford Maurya the opportunity for a full and fair opportunity to litigate his discrimination claim.